Filed 8/22/19 P. v. Patino CA2/6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. JUSTIN ADRIAN PATINO, Defendant and Appellant.	2d Crim. No. B290958 (Super. Ct. No. 2013013061) (Ventura County)

Justin Adrian Patino appeals from the judgment after a jury convicted him of first degree murder (Pen. Code, §§ 187, subd. (a), 189, subd. (a)), and found true allegations that he committed murder for the benefit of a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(C)) and personally and intentionally discharged a firearm causing death (Pen. Code, § 12022.53, subd. (d)). The trial court sentenced him to two consecutive terms of 25 years to life in state prison. Patino contends the judgment should be reversed because the court erroneously admitted unreliable hearsay evidence that implicated him in the murder. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Patino, Gilbert Villanueva, and Mauro Andres were members of the Cabrillo Village street gang in Ventura. Patino's moniker was "Gumby"; Villanueva's, "Ryder"; Andres's, "Giant." The Eastside Saticoy gang was Cabrillo Village's main rival.

In June 2012, Patino posted two pictures to Facebook titled, "Posted." In the pictures, Patino wore a black and white bandana over his face while flashing a Cabrillo Village gang sign. Cabrillo Village gang tattoos were visible on his bicep and chest.

Later that evening, 14-year-old J.B., an Eastside Saticoy gang member, went to Saticoy Park with his friends. The park is in Eastside Saticoy territory. Two men in dark clothing were walking near the playground equipment. J.B.'s friend, M.U., feared something was wrong. J.B. told M.U. and the others to wait as he walked toward the men.

The two men began to shoot at J.B. He tried to run away, but fell to the ground. The gunmen approached J.B. where he lay and continued to fire, aiming at his head. Each shot J.B. several more times. The gunmen then ran away.

A police officer who lived near the park heard between six and 10 gunshots from two different firearms. He went to the park and saw J.B.'s body lying on the ground, surrounded by his friends.

M.U. said that there were two gunmen. Each wore dark clothing. They were not "that tall." One had a bandana across his face.

Another of J.B.'s friends, R.E., said that the gunmen both wore hoodies. One was skinny and the other was "a little chubby." Each had a bandana across his face. Both men wore checkered shorts that reached past their knees.

B.L. witnessed the shooting from a house near the park. She called 911 and told the operator that two men wearing black hoodies, white shirts, and shorts had shot someone at Saticoy Park. The men appeared to be Hispanic.

C.L. also witnessed the shooting. She said the gunmen wore dark hooded sweatshirts, dark shorts, and long white socks. Each was thin and stood around "5'6" tall." Both had bald or shaved heads. One gunman had lighter skin than the other.

Sheriff's deputies and paramedics responded to the park. J.B. had been shot in his head, arm, chest, back, and foot. There was stippling around two of his head wounds, indicating that they had been inflicted from close range. Paramedics pronounced J.B. dead at the scene.

Deputies found spent bullets near J.B.'s head. They found another bullet in a flower bed at a nearby residence, and another in the exterior stucco of a second residence. They also recovered two bullets from J.B.'s body, one from his abdomen and one from his neck.

A detective who responded to the scene saw fresh graffiti throughout Saticoy Park. In one location was the inscription "CV13 Ryder," with "Gumby" sprayed underneath.[1] In another location the graffiti said, "Ryder, Gumby, Giant. We're back. Come out and play, posted every day." Additional references to CV13, Ryder, Gumby, and Giant were sprayed around the park. The graffiti was not there a few hours before J.B.'s murder.

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[1] "CV" is the Cabrillo Village gang's insignia. "13" pays homage to the Mexican Mafia.

An hour or two after the shooting, G.T., the owner of a Santa Paula horse ranch located two or three miles from Saticoy Park, heard a knock on his front door. He opened the door and saw Patino, whom he recognized. Another man stood in the shadows about 25 feet away. Patino wore a white t-shirt, black jacket, and blue or black pants. Both he and his companion were dirty.

Patino asked G.T. if he could use his phone. Patino then called Felipe Leon and spoke for about three minutes. He returned G.T.'s phone, and left with his companion.

A few weeks later, Leon told an investigator that he knew the identity of J.B.'s murderers and the location of the murder weapons. Leon said that, the day after the murder, Villanueva told him that he and Patino shot J.B. to avenge a prior attack on Andres. Villanueva said that he and Patino ran to Santa Paula after the murder, burying their guns en route. Villanueva and Patino then called Leon and asked for a ride from Santa Paula. Leon could not help them because of a problem with his car. Villanueva and Patino eventually got a ride home, where they burned their clothes.

Leon said that Villanueva later asked him if he wanted to buy a gun. Leon said that he was interested, so Villanueva took him to the levee where he and Patino buried the guns used to murder J.B. While searching for them, Villanueva was spooked when another vehicle drove by. The two left without the guns.

A detective spoke with G.T. and asked if he could identify the person who used his phone the night of J.B.'s murder. G.T. identified Patino. Phone records showed that his phone had been used to call Leon, whom G.T. did now know.

Another detective went to the levee where Leon said the murder weapons were buried. It was about 150 feet from G.T.'s house, and two or three miles from Saticoy Park. The detective recovered two revolvers from the levee, each buried in a separate hole. One was a .357 Taurus wrapped in a black and white bandana, similar to the one Patino wore in the Facebook pictures. It contained two live rounds and four fired cartridge cases. The second was a Smith & Wesson .38 Special wrapped in a dark blue bandana. It contained six fired cartridge cases and no live rounds.

A criminalist determined that the two bullets recovered from J.B.'s body had been fired from the Taurus. Those recovered from the flower bed and stucco had been fired from the Smith & Wesson. Villanueva was a possible contributor to the DNA found on the trigger of the Smith & Wesson. Patino was a possible contributor to the DNA found on the black and white bandana wrapped around the Taurus. His mother's boyfriend was a major contributor to the DNA found on the bandana.[2]

Prior to trial, prosecutors sought to admit, as declarations against penal interest, Villanueva's statements implicating himself and Patino in J.B.'s murder. (See Evid. Code,[3] § 1230.) Patino moved to exclude the evidence. He argued that Villanueva's statements were exculpatory because he told

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[2] At the time of J.B.'s murder, Patino lived with his mother and her boyfriend. The boyfriend had several bandanas in the home. He had misplaced some of them, but had never buried any in Santa Paula. He was incarcerated on the night J.B. was murdered.

[3] All further unlabeled statutory references are to the Evidence Code.

Leon that he only shot J.B. in the torso, but said that Patino shot him in the head. Villanueva also said, "'Hey, as long as I know what I did, like, that's what I'm cool with, you know.'" Leon understood this to mean that Villanueva did not kill J.B. Additionally, Patino argued that Villanueva's statements were unreliable because he lied when he said that only Patino shot J.B. after he had fallen to the ground.

The trial court denied Patino's motion. The court found that Villanueva's admissions that he and Patino went to Saticoy Park armed with firearms, that both of them shot J.B., and that he watched while Patino stood over a fallen J.B. and shot him again qualified as declarations against penal interest. Leon's testimony did not need to be limited because statements that did not directly inculpate Villanueva provided context for them. The statements were reliable because Villanueva made them to a friend in a relaxed environment. And any ambiguity in what Villanueva was "cool with" did not render the evidence inadmissible.

At trial, Leon testified that Villanueva and Andres came to his house the day after J.B.'s murder. Villanueva told him that he and Patino had been "tagging" at Saticoy Park the night before. They were armed and looking to exact revenge for an assault on Andres. While tagging, Villanueva and Patino saw J.B. and his friends. Villanueva asked J.B. if he remembered him. When J.B. began to run away, Villanueva and Patino opened fire.

Villanueva said that J.B. fell to the ground. He and Patino walked up and stood over him. J.B. was still breathing. He said, "Homie, please don't do this." Patino then shot him in "the upper body. I guess his face." Villanueva also "unloaded" on

J.B. He and Patino ran to Santa Paula, where they buried their guns.

"I did this for you," Villanueva told Andres. "I told you I would do this for you." "That's right. Terminate on sight, dog. See that?" Andres and Villanueva smiled at each other and shook hands.

DISCUSSION

Patino contends the trial court erred when it permitted Leon to testify about the statements Villanueva made to him because the statements: (1) portrayed Patino as more culpable than Villanueva, and (2) were not sufficiently trustworthy. We disagree.

In general, hearsay evidence is inadmissible. (§ 1200, subd. (b).) But hearsay evidence of statements that are against the declarant's penal interest are excepted from this general rule. (§ 1230.) To have evidence admitted as a declaration against interest, the proponent of the evidence must show that: (1) the declarant is unavailable, (2) the statements sought to be admitted were against the declarant's penal interest at the time they were made, and (3) the statements were sufficiently trustworthy to warrant admission despite their hearsay nature. (*People v. Duarte* (2000) 24 Cal.4th 603, 610-611 (*Duarte*).)

The first of these required showings is not at issue here: Villanueva invoked his Fifth Amendment right not to testify, and was thus "unavailable." (*People v. Leach* (1975) 15 Cal.3d 419, 438 (*Leach*); see § 240, subd. (a)(1).)

As to the second, declarations against interest often contain within them statements that are not "specifically disserving to the interests of the declarant." (*Leach*, *supra*, 15 Cal.3d at p. 441.) Such "collateral statements are not made

trustworthy by [their mere] proximity to incriminating statements." (*Duarte*, *supra*, 24 Cal.4th at p. 617.) Courts must therefore consider each statement in context and determine whether it is one "that 'a reasonable [person] in the declarant's position would not have made . . . unless [they] believed it to be true.'" (*People v. Grimes* (2016) 1 Cal.5th 698, 716 (*Grimes*).) If the context shows that the statement is self-serving—that it either has a "net exculpatory effect" or is "'an attempt to shift blame or curry favor'"—it is not sufficiently against the declarant's penal interest to be admitted. (*Duarte*, at pp. 611-612, alterations omitted.) But if the context shows that the statement is "not merely 'self-serving' but [rather is] 'inextricably tied to and part of a specific [declaration] against penal interest,'" it may admissible, regardless of whether it inculpates or exculpates another person. (*Grimes*, at p. 715.)

As to section 1230's third required showing, there is no "litmus test" for determining whether a statement is sufficiently trustworthy to be admitted as a declaration against interest. (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 334 (*Greenberger*).) The trial court should instead examine the totality of the circumstances. (*Duarte*, *supra*, 24 Cal.4th at p. 614.) This requires examining "not just the words but the circumstances under which they were uttered, the possible motivation of the declarant, and the declarant's relationship to the defendant." (*People v. Frierson* (1991) 53 Cal.3d 730, 745 (*Frierson*).)

We review the trial court's finding that Villanueva's statements were against his penal interest for abuse of discretion. (*People v. Lawley* (2002) 27 Cal.4th 102, 153.) We apply the same standard of review to the court's finding that

Villanueva's statements were sufficiently trustworthy to be admitted at trial. (*Frierson*, *supra*, 53 Cal.3d at p. 745.)

Villanueva's statements were against his penal interest

The trial court did not abuse its discretion when it determined that Villanueva's statements to Leon were against his penal interest. Villanueva told Leon that he and Patino went to Saticoy Park carrying firearms, looking to exact revenge for a prior assault on Andres. At the park, Villanueva "unloaded" his firearm on J.B. He watched as Patino shot J.B. in the face. He and Patino then fled the scene and attempted to hide their weapons. He later bragged to Andres that he had "[t]erminate[d] [J.B.] on sight."

Through these statements, Villanueva essentially admitted that he aided and abetted a premeditated revenge killing. (*People v. Perez* (2005) 35 Cal.4th 1219, 1225; see, e.g., *People v. Garcia* (2008) 168 Cal.App.4th 261, 273-274.) Thus, rather than shift the blame to Patino, Villanueva rendered himself just as culpable for J.B.'s murder as if he had fired the fatal shots. (*Perez*, at p. 1226; see *People v. Chiu* (2014) 59 Cal.4th 155, 166-167 (*Chiu*) [aider and abettor may be convicted of first degree premeditated murder based on direct aiding and abetting principles].) All of his statements to Leon were therefore against his penal interest.[4] (*People v. Arceo* (2011) 195 Cal.App.4th 556, 576; *People v. Cervantes* (2004) 118 Cal.App.4th

[4] Even if the murder were deemed a natural and probable consequence of the attack on J.B., Villanueva's statements still rendered him culpable for second degree murder. (*Chiu*, *supra*, 59 Cal.4th at p. 166.) It was thus disserving to him, despite implicating Patino in a potentially more serious offense. (*People v. Gordon* (1990) 50 Cal.3d 1223, 1252; *People v. Wilson* (1993) 17 Cal.App.4th 271, 276.)

162, 175, disapproved on another ground by *People v. Cortez* (2016) 63 Cal.4th 101, 125, fn. 5.)

Even if Villanueva's statement that Patino shot J.B. in the head was not inherently against his penal interest, it was nevertheless admissible because it was inextricably tied to those that were. Villanueva's statements showed that he and Patino went to Saticoy Park to avenge Andres's assault. They put him at the scene of J.B.'s murder. They showed that he, in fact, shot J.B., and that J.B. died from his wounds. But the bullets police recovered from J.B.'s body came *only* from the gun on which Villanueva's DNA was not found. Villanueva's purely inculpatory statements thus would have made little sense without reference to Patino's participation in J.B.'s murder. (*People v. Smith* (2017) 12 Cal.App.5th 766, 793 (*Smith*); see also *Grimes*, *supra*, 1 Cal.5th at p. 717 [where disputed statement forms part of declarant's responsibility for murder, it is not "practically separable" from the remainder].) The trial court properly deemed them against Villanueva's penal interest.

Villanueva's statements were sufficiently trustworthy

The trial court also did not abuse its discretion when it deemed Villanueva's statements to be sufficiently trustworthy to be admitted. Villanueva made his statements unprompted, in the presence of friends he had seen nearly every day for the past two years. He recalled the details of J.B.'s murder in a relaxed, comfortable setting: Leon's home. And he did so less than 24 hours after the murder occurred. The totality of the circumstances shows that Villanueva's statements were sufficiently trustworthy for admission pursuant to section 1230. (See, e.g., *People v. Cudjo* (1993) 6 Cal.4th 585, 607 [spontaneous statement to a friend was trustworthy]; *Smith*, *supra*, 12

Cal.App.5th at p. 793 [spontaneous statement that included details others could not know was trustworthy]; *Greenberger*, *supra*, 58 Cal.App.4th at p. 335 ["the most reliable circumstance is one in which the conversation occurs between friends in a noncoercive setting that fosters uninhibited disclosures"].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gilbert A. Romero, Judge

Superior Court County of Ventura

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